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| <p style="text-align: right;">Page 234</p> <p>1 A. Yes, I believe they didn't receive an answer 2 from me. 3 Q. And after September 15th, 2001, did they receive 4 an answer from you? 5 A. I don't believe they did. 6 Q. Did you discuss this -- do you recall discussing 7 this with Mr. Herrera? 8 A. I do not recall discussing it with him. 9 (Copy of E-mail to Mr. Price, et al. 10 from Mr. Simmons and Attachment were 11 marked Exhibit Number 47 for 12 identification.) 13 Q. I show you this document and ask you if you 14 recognize it. 15 A. No, I do not recognize this document at all. 16 Q. Does this refer to the earlier exhibit that I 17 showed you about two or three exhibits ago where 18 there was some tax planning issue in your words? 19 A. I believe it is. 20 Q. Okay. 21 A. It seems to fall in line with the tax planning 22 discussions that we were beginning to have. 23 Q. Okay. So am I correct that on October 23rd, 24 2001, just three weeks or so before you give</p> | <p style="text-align: right;">Page 236</p> <p>1 not seen any documents transferring anything. 2 Q. If you look at the second page of this exhibit, 3 it's got -- 4 MR. STEWART: We're still on Exhibit 5 47? 6 MR. BOSTWICK: Yes. 7 Q. It's a memo, dated October 19th, 2001, correct? 8 A. Yes. 9 Q. And there's a current structure, which is a few 10 weeks before the notice to Ethypharm, and that's 11 a pretty simple, straightforward structure, 12 correct; Bentley Pharmaceuticals at the top, 13 Laboratorios Belmac underneath? 14 A. This is a proposed or tentative, for-discussion- 15 purposes structure: 16 Q. Well, that -- I think the title on that says 17 Current Structure. Do you see that? 18 A. What page are you on? 19 Q. Maybe you're on the wrong page. 3093. In other 20 words, on 3093, two, three weeks before or -- 21 three weeks or so before the notice to 22 Ethypharm, this structure for the IP and the tax 23 relating to the intellectual property currently 24 under development in Spain is a relatively</p> |
| <p style="text-align: right;">Page 235</p> <p>1 notice to Ethypharm, there is an effort to 2 exchange preliminary and tentative tax planning 3 structures for the intellectual property 4 currently under development in Spain? 5 A. I don't know. 6 Q. So I asked you before who actually owned the 7 intellectual property, whether it was the 8 know-how, the patents, et cetera, and I 9 understand that Laboratorios Belmac filed for 10 the patents, for example, but do you know to a 11 certainty sitting here today as to which one of 12 these subsidiaries or parents or entities 13 actually owns the intellectual property that was 14 under development in Spain in October 2001 15 relating to omeprazole and lansoprazole? 16 A. I believe Laboratorios Belmac. 17 Q. Do you know that to a certainty? 18 A. Not 100 percent, but I feel quite comfortable 19 that it is Laboratorios Belmac. 20 Q. Why do you think that? 21 A. Because the inventors of the IP were employees 22 of Laboratorios Belmac. It was filed by 23 Laboratorios Belmac. It makes logical sense 24 that it would be Laboratorios Belmac, and I have</p> | <p style="text-align: right;">Page 237</p> <p>1 simple, straightforward structure, correct? 2 A. Yes. 3 Q. Bentley on top, Laboratorios Belmac underneath, 4 correct? 5 A. Yes. 6 Q. Can you explain to me the proposed structure of 7 what's going to happen with the intellectual 8 property under development in Spain, which is on 9 the next page, 3094? 10 A. Not a possibility. I could not explain this. 11 As I said, I had not seen this. It was part of 12 tax planning, the potential ways for IP to be 13 held. It never came up to my level for review 14 and explanation. 15 Q. Okay. So there's -- it does say on that page, 16 3094, that there'd be a transfer of IP to this 17 Swiss branch of a Spanish holding company, and 18 you wind your way up to Bentley Pharmaceuticals 19 at the top of this food chain. Do you see that? 20 MR. STEWART: Are you asking him now 21 to simply repeat what he sees in the piece of 22 paper? Because he's already told you he has no 23 knowledge of this document. 24 Q. I'm just asking if my characterization of that</p> |

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1 graph appears to be correct to you.

2 MR. STEWART: Objection. The document

3 speaks for itself. You have it as an exhibit.

4 A. I don't know. I don't know this graph.

5 Q. Whose idea was it to change the structure -- the

6 proposed European structure around October 2001?

7 A. I don't think it was anybody's plan or proposal.

8 It was part of tax planning, what should we be

9 looking for in the future and should we be

10 exploring what would make sense for all the

11 intellectual property. This never went

12 anywhere. It never came to me for discussion.

13 Q. When you say it never went anywhere, was a

14 different structure ultimately implemented?

15 A. No.

16 Q. Pardon?

17 A. No. There's no other structure implemented

18 along these lines at all.

19 Q. Okay. So is it your understanding that the

20 current structure that exists today is the

21 structure that's set forth on Page 3093?

22 A. Yes. We have recently talked about other

23 possibilities with our Irish subsidiary that has

24 been formed within the last year.

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1 Q. When was -- what is it, Pharma -- Pharma de

2 Espana created, the wholly owned subsidiary of

3 Bentley, which is a Delaware corporation?

4 A. I don't know the date. It was formed -- it was

5 formed in contemplation of possible sale of the

6 subsidiary.

7 Q. Was it around this time period, 2001, or before

8 or after?

9 A. I really don't know.

10 Q. Is Mike Price a better person to ask about the

11 details of this arrangement?

12 A. Yes.

13 Q. We have looked at the termination letter or -- a

14 termination letter dated November 14th, and I

15 want to show you a document that has the same

16 date on it.

17 (Press Release, dated November 14, 2001

18 was marked Exhibit Number 48 for

19 identification.)

20 Q. I'll ask you to take a look at that and see if

21 you recognize it.

22 MR. STEWART: While the witness is

23 looking, can I take -- can I have Exhibit 45,

24 please?

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1 THE WITNESS: 45?

2 MR. STEWART: If you want to just hand

3 me the whole thing.

4 (Documents handed the counsel.)

5 MR. STEWART: Thank you.

6 A. Yes.

7 Q. Okay. You recognize that to be a press release

8 issued by Bentley on November 14th, 2001?

9 A. Yes.

10 Q. Why did you issue -- why did Bentley issue a

11 press release about the filing of patents

12 relating to omeprazole and lansoprazole on the

13 same day they terminated -- they gave notice of

14 termination of the agreement with Ethypharm?

15 A. I don't believe there was any connection nor any

16 contemplation. I would have to say to the best

17 of my knowledge that would be only by

18 coincidence.

19 Q. So that's sheer coincidence?

20 A. Yes.

21 Q. And is this statement that Bentley

22 Pharmaceuticals files for new patents, is that

23 true?

24 A. It says, "Announced through it's wholly owned

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1 Spanish subsidiary, Laboratorios Belmac."

2 Q. So that Bentley filed these through its wholly

3 owned Spanish subsidiary; that's correct?

4 A. No. It says, "Bentley Pharmaceuticals, a drug

5 delivery company with commercial presence in

6 Europe, announced today that through its wholly

7 owned Spanish subsidiary," meaning the Spanish

8 subsidiary filed, Laboratorios Belmac, "new

9 patents."

10 Q. Let's look at the title of that press release

11 first. The title says Bentley Pharmaceuticals

12 Files For New Patents. Do you see that?

13 A. Yes.

14 Q. And is that a true statement that Bentley

15 Pharmaceuticals files for new patents?

16 A. On a consolidated basis, when you consider the

17 subsidiaries in there, yes, it is.

18 Q. In there what?

19 A. In Bentley Pharmaceuticals, on a consolidated

20 basis.

21 Q. Meaning viewing the group as a whole, Bentley

22 and its subsidiaries?

23 A. Bentley and its subsidiaries -- Bentley together

24 with its subsidiaries or through its

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| <p style="text-align: right;">Page 242</p> <p>1 subsidiaries.</p> <p>2 Q. And is that the impression you're trying to give</p> <p>3 the public and the shareholders, that Bentley</p> <p>4 acts as a consolidated whole?</p> <p>5 A. No. I think we were very clear to the</p> <p>6 shareholders. We clearly said in the first</p> <p>7 paragraph that Bentley, a publicly traded</p> <p>8 company, BNT, is a drug delivery company with a</p> <p>9 commercial presence in Europe, and through its</p> <p>10 wholly owned subsidiary, Spanish subsidiary.</p> <p>11 Very clear.</p> <p>12 Q. It doesn't say, "and through." It says,</p> <p>13 "Bentley Pharmaceuticals, Inc." --</p> <p>14 A. Right. It doesn't say "and." Bentley.</p> <p>15 Q. -- "through its wholly owned subsidiary,"</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. So that's a truer statement than Bentley</p> <p>19 Pharmaceuticals files for new patents; is that</p> <p>20 what you're saying?</p> <p>21 A. When you read the text, it's very clear, very</p> <p>22 distinct. The title is a summary piece that's</p> <p>23 just put up above. Bentley Pharmaceuticals in</p> <p>24 the title because that's the publicly traded</p> | <p style="text-align: right;">Page 244</p> <p>1 understand everything about a specific drug and</p> <p>2 direct someone to file a patent on it, correct?</p> <p>3 MR. STEWART: Objection.</p> <p>4 A. Yes.</p> <p>5 Q. Isn't that what's happening here?</p> <p>6 A. No.</p> <p>7 Q. This is not -- it's your position, I take it,</p> <p>8 that this filing of the four patents relating to</p> <p>9 omeprazole and lansoprazole is not a part of a</p> <p>10 coordinated strategy designed by Bentley</p> <p>11 headquarters in the U.S.?</p> <p>12 A. It is not designed by Bentley headquarters in</p> <p>13 the U.S.</p> <p>14 Q. When was the press release drafted? Do you</p> <p>15 know?</p> <p>16 A. I don't know.</p> <p>17 Q. Who drafts them?</p> <p>18 A. Sometimes I get involved. Sometimes Mike Price.</p> <p>19 Other times it could be our investor relations</p> <p>20 organization.</p> <p>21 Q. And there's a benefit to Bentley in Laboratorios</p> <p>22 Belmac filing these four patents; isn't that</p> <p>23 correct?</p> <p>24 A. Yes.</p> |
| <p style="text-align: right;">Page 243</p> <p>1 company, and then the subject, what is the news,</p> <p>2 is new patents for omeprazole and lansoprazole.</p> <p>3 Very typical press release.</p> <p>4 Q. Do you believe it is fair to say that Bentley</p> <p>5 Pharmaceuticals was -- strike that. Do you feel</p> <p>6 that it's fair to say that Laboratorios Belmac</p> <p>7 was acting in concert with Bentley</p> <p>8 Pharmaceuticals' strategy in filing these four</p> <p>9 new patents for omeprazole and lansoprazole?</p> <p>10 A. No. Laboratorios Belmac was conducting its own</p> <p>11 strategy.</p> <p>12 Q. And Bentley Pharmaceuticals had no input, no</p> <p>13 direction or control over Laboratorios Belmac's</p> <p>14 strategy to file four new patents for improved</p> <p>15 orally delivered product, including omeprazole</p> <p>16 and lansoprazole; is that correct?</p> <p>17 A. There is nobody within Bentley Pharmaceuticals</p> <p>18 that has expertise in oral drug delivery</p> <p>19 processes or products or patents to be able to</p> <p>20 guide or interact with Laboratorios Belmac.</p> <p>21 Hence, Laboratorios Belmac out of necessity must</p> <p>22 act on its own and with its advisors and its own</p> <p>23 patent counsels.</p> <p>24 Q. Well, sir, you could easily as a CEO not</p> | <p style="text-align: right;">Page 245</p> <p>1 Q. Okay. And you actually are quoted at length</p> <p>2 about the benefits to Bentley, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Who created your quotation? Is that you talking</p> <p>5 to your press people and they're quoting you?</p> <p>6 A. I don't know in this case. Sometimes the IR</p> <p>7 group writes what they feel it is, and then we</p> <p>8 edit it. Other times, we might change some</p> <p>9 words or insert words. I don't know in this</p> <p>10 particular case.</p> <p>11 Q. Was this given to you for your review, this</p> <p>12 press release?</p> <p>13 A. Yes.</p> <p>14 Q. So you approved of its contents?</p> <p>15 A. Yes.</p> <p>16 (Confidentiality Agreement was marked</p> <p>17 Exhibit Number 49 for identification.)</p> <p>18 Q. I'm going to show you Exhibit 49, which is</p> <p>19 another document dated the very same day,</p> <p>20 November 14th, 2001, and it's a confidentiality</p> <p>21 agreement between Laboratorios Belmac and</p> <p>22 PharmAlliance. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And this relates to omeprazole; does it not?</p> |

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| <p style="text-align: right;">Page 246</p> <p>1 A. Yes.</p> <p>2 Q. And PharmAlliance was a client of Ethypharm's,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. So the very same day you give notice of</p> <p>6 termination but haven't yet terminated the</p> <p>7 contract with Ethypharm and the very same day</p> <p>8 there's an announcement by Bentley of the new</p> <p>9 patents, Laboratorios Belmac also enters into a</p> <p>10 confidentiality agreement relating to</p> <p>11 omeprazole; is that correct?</p> <p>12 MR. STEWART: Objection as to the</p> <p>13 characterization of the use of the word "you,"</p> <p>14 which is vague and unspecific.</p> <p>15 A. Adolfo Herrera apparently entered into an</p> <p>16 agreement on this date with PharmAlliance.</p> <p>17 Q. Do you know anything about this?</p> <p>18 A. I was not aware of it.</p> <p>19 Q. Have you ever seen this document before?</p> <p>20 A. I don't recall seeing this.</p> <p>21 Q. You're aware that PharmAlliance was a customer</p> <p>22 of Ethypharm?</p> <p>23 A. Yes.</p> <p>24 Q. Does this surprise you?</p> | <p style="text-align: right;">Page 248</p> <p>1 listed as the Bentley -- on the Bentley project</p> <p>2 status report, dated November 20th, 2001?</p> <p>3 A. Yes.</p> <p>4 Q. And the action to be taken is Jordan and Bob G.</p> <p>5 to review patent issues, Jordan to have more</p> <p>6 oversight on patents. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And Jordan, again, is Bentley's attorney, not</p> <p>9 Belmac's attorney, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Who is Bob G.?</p> <p>12 A. Bob G. is head of research, responsible for the</p> <p>13 patent -- patents of Bentley.</p> <p>14 Q. So you're getting Bentley lawyers more involved</p> <p>15 in the Spanish patent situation; is that</p> <p>16 correct?</p> <p>17 MR. STEWART: Objection.</p> <p>18 A. No.</p> <p>19 Q. They're going to review the patent issues,</p> <p>20 correct?</p> <p>21 A. If you remember, we were looking at tax planning</p> <p>22 and IP, and Jordan was in charge of doing that.</p> <p>23 This is very consistent with what we talked</p> <p>24 about previously.</p> |
| <p style="text-align: right;">Page 247</p> <p>1 A. Does this surprise me?</p> <p>2 Q. Yes.</p> <p>3 A. No.</p> <p>4 Q. Is this something that you think is acceptable</p> <p>5 and appropriate?</p> <p>6 MR. STEWART: Objection.</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Let me show you another document.</p> <p>9 (Copy of E-mail to Mr. Murphy, et al.</p> <p>10 from Mr. Fitzgibbons, dated November 20,</p> <p>11 2001, and Attachment were marked Exhibit</p> <p>12 Number 50 for identification.)</p> <p>13 Q. I ask if you recognize that document as a</p> <p>14 project status report for Bentley</p> <p>15 Pharmaceuticals, dated November 20th, 2001, with</p> <p>16 a cover e-mail?</p> <p>17 A. Yes.</p> <p>18 Q. And you're one of the recipients on that e-mail</p> <p>19 of November 30th, 2001?</p> <p>20 A. Yes.</p> <p>21 Q. This is one of these operation reports or</p> <p>22 project status reports, correct?</p> <p>23 A. Yes.</p> <p>24 Q. If you look at 15, you see the new patents all</p> | <p style="text-align: right;">Page 249</p> <p>1 Q. But that's not what this says. This says,</p> <p>2 "Jordan to have more oversight on patents." And</p> <p>3 you're referring to the Spanish patents here</p> <p>4 listed on Number 15, correct?</p> <p>5 A. No. This is an action item for the whole</p> <p>6 Section 15 above and below. So he was going to</p> <p>7 look at the Spanish patents as well.</p> <p>8 Q. Okay. And Jordan is going to visit Spain the</p> <p>9 week the 6th of January, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And Jordan is going to call and coordinate that;</p> <p>12 is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. And we saw an exhibit earlier with your personal</p> <p>15 handwritten notes that had about five items. I</p> <p>16 apologize. It's this document. I don't know --</p> <p>17 it was the undated document?</p> <p>18 MR. STEWART: What exhibit?</p> <p>19 MR. BOSTWICK: I don't have the</p> <p>20 exhibit number on it.</p> <p>21 MR. STEWART: What does it look like?</p> <p>22 What's the Bentley Bates number?</p> <p>23 MR. BOSTWICK: 1227. Is that it?</p> <p>24 MR. STEWART: Yes.</p> |

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| <p style="text-align: right;">Page 250</p> <p>1 MR. BOSTWICK: What's the exhibit 2 number? 3 MR. STEWART: 43. 4 Q. If you could take a look at Exhibit 43 again. 5 Now, is this -- is the list of patents on 6 Bentley 1228 essentially the same as the list of 7 patents in the Bentley project status report on 8 November 20th, 2001, 15a through e? 9 A. Yes. 10 Q. So that's a Bentley project, correct? 11 A. What's a Bentley project? 12 Q. This list of items. 13 A. This list of items here, these are patents from 14 Spain filed by the Spanish company, for which we 15 are taking a look at all of our intellectual -- 16 Bentley's intellectual property and that of its 17 subsidiaries. 18 Q. Okay. In -- well, let me show it to you in this 19 manner. 20 (Diary Entry was marked Exhibit Number 21 51 for identification.) 22 MR. STEWART: Can we have a date for 23 Exhibit 51? 24 MR. BOSTWICK: It says for</p> | <p style="text-align: right;">Page 252</p> <p>1 meeting, these list of people? 2 A. Probably wanted to get out of the cold weather, 3 get into warm Florida weather. Other than that, 4 there's no recollection of why. 5 Q. Did Adolfo Herrera come over to the U.S. 6 sometime around the end of 2001 or the beginning 7 of 2002? 8 A. I don't know. I don't know. 9 Q. I show you this. 10 MR. STEWART: I'd going to need to 11 make my call. 12 MR. BOSTWICK: You want to do that 13 before we -- 14 MR. STEWART: I think I ought to do 15 that. 16 THE VIDEOGRAPHER: The time is 6 p.m. 17 We're going off the record. 18 (Recess) 19 THE VIDEOGRAPHER: The time is 20 6:07 p.m. We're back on the record. 21 (Contrato de Transferencia de 22 Tecnologia y Cesion de Know How and 23 Translation was marked Exhibit Number 52 24 for identification.)</p> |
| <p style="text-align: right;">Page 251</p> <p>1 December 4th, 2001. Maybe the witness can tell 2 us if that's when it was created or whether 3 that's a planning item for December 4th? 4 MR. STEWART: I want to go off the 5 record for just a minute, please. 6 THE VIDEOGRAPHER: Stand by. The time 7 is 5:57 p.m. We're going off the record. 8 (Recess) 9 THE VIDEOGRAPHER: The time is 10 5:58 p.m. We're back on the record. 11 Q. My question to you about this current 12 document -- what is it, 51? 13 A. 51. 14 Q. -- yeah -- is whether there was a Spanish 15 meeting in Florida sometime around December of 16 2001. 17 A. No, there was not. 18 Q. Okay. Was there a plan to do that and then it 19 didn't occur? 20 A. This, I believe, was notes to myself saying, 21 "Hey, it might be nice to get everybody together 22 for a meeting." It never happened. 23 Q. Why did you think it would be nice around 24 December of 2001 to get everybody together for a</p> | <p style="text-align: right;">Page 253</p> <p>1 Q. Mr. Murphy, I'm going to show you an Exhibit 52, 2 which is in Spanish. You and Mr. Price have 3 signed this document. I've provided a rough 4 translation here for your review in English. 5 After you've had a chance to look at that for a 6 minute, I'd like to know if you recognize that 7 document. 8 A. Okay. 9 Q. Do you recognize this document? 10 A. No, I don't recognize it. 11 Q. Now, this is a January 1st, 2002 transfer of 12 technology and assignment of know-how agreement. 13 Is that correct? 14 A. Yes. 15 Q. And it's signed by you on behalf of Laboratorios 16 Belmac as the sociedad unipersonal, correct? 17 A. Yes. 18 Q. And Mike Price on behalf of Bentley, correct? 19 A. Yes. 20 Q. What does sociedad unipersonal mean? Do you 21 know? 22 MR. STEWART: Are you asking him to 23 translate the Spanish? 24 MR. BOSTWICK: I'm asking if it's a</p> |

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1 title, what it means.

2 A. I do not know.

3 MR. STEWART: Is there some -- are you

4 testing out the translation that you have

5 provided in the English translation? Is there

6 an assertion that the translation that you

7 provided is not accurate? Is that why you're

8 asking him that question?

9 MR. BOSTWICK: No, that's a specific

10 title in Spanish, and I'm asking him since he

11 signed under it whether he knows what that title

12 means, not necessarily the translation of it,

13 but what the title means; just like if it says

14 CEO, what does that mean.

15 Q. But do you know what that term "sociedad

16 unipersonal" means?

17 A. I do not know.

18 Q. I take it from your prior testimony you don't

19 recall signing this document. Is that the case?

20 A. I don't recall, but I did sign this.

21 Q. Okay. Is this a document of some importance to

22 Bentley and Belmac?

23 A. I believe that this probably has to do with tax

24 planning again, with being able to document

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1 services that Bentley would provide to

2 Laboratorios Belmac to justify management

3 services fees and the distribution of overheads

4 there.

5 Q. Okay. So basically, do I understand that

6 Belmac -- Laboratorios Belmac is going to pay

7 Bentley Pharmaceuticals a management fee of

8 sorts through this agreement?

9 A. Bentley Pharmaceuticals receives management fees

10 from Laboratorios Belmac.

11 Q. For managing --

12 A. For various services. Wherever it can be of

13 service.

14 Q. Okay. In other words, Laboratorios Belmac

15 receives fees for managing Laboratorios Belmac?

16 MR. STEWART: Objection. You said

17 Laboratorios Belmac receives fees for managing

18 Laboratorios Belmac.

19 MR. BOSTWICK: My mistake. Thank you.

20 Q. Bentley Pharmaceuticals receives management fees

21 or fees for managing Laboratorios Belmac; is

22 that correct?

23 A. No, for providing services to Laboratorios

24 Belmac.

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1 Q. And how much does Bentley Pharmaceuticals

2 receive for that purpose?

3 A. I don't know that exact amount.

4 Q. Does it say under Item 4 here of your translated

5 version? Does it sound right to you that

6 Laboratorios Belmac pays Bentley Pharmaceuticals

7 500,000 euros per year?

8 A. I don't know the exact amount. The accounting

9 department would know.

10 Q. And that amounts -- \$500,000 a year is

11 approximately -- euros is approximately

12 \$600,000?

13 MR. STEWART: Objection.

14 Q. Strike that. I need to ask that question again.

15 500,000 euros is approximately \$600,000; is that

16 correct?

17 MR. STEWART: Objection.

18 A. I don't know what the current exchange rate is.

19 Q. Was Adolfo Herrera consulted with respect to

20 this transfer of technology and assignment of

21 know-how agreement?

22 A. I don't know. I would think he would be.

23 Q. Can you recall specifically sitting down with

24 Mr. Herrera and discussing this agreement with

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1 him?

2 A. I don't recall that. I believe it may have been

3 Mike Price that may have talked to Adolfo

4 because this is an accounting issue.

5 Q. Who prepared this document? Was it people in

6 the United States in your accounting group or

7 your tax group or was it people in Spain?

8 A. It was in Spanish, so it would probably not be

9 prepared by the U.S. personnel.

10 Q. Is this something Jordan Horvath was involved

11 with?

12 A. I don't think so.

13 Q. Does the transfer of technology and the

14 assignment of know-how in this arrangement go

15 from Bentley to Laboratorios Belmac or to

16 Laboratorios Belmac to Bentley (sic)?

17 A. I'm not sure which direction this would be going

18 in. Bentley Pharmaceuticals is technology in

19 topical and transdermal, such as our topical

20 testosterone gel.

21 Q. I'm sorry. Where are you reading?

22 A. I'm just telling you. So our personnel -- if we

23 were to transfer any of our products into Spain

24 for commercialization, our personnel would have

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| <p style="text-align: right;">Page 258</p> <p>1 to go over there and train Laboratorios Belmac.</p> <p>2 Q. In transdermal?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Is -- have you sent people over from Bentley to</p> <p>5 work on transdermal issues?</p> <p>6 A. Yes.</p> <p>7 Q. How many?</p> <p>8 A. Three or four people.</p> <p>9 Q. Okay. During what time period?</p> <p>10 A. I don't know the exact time period, but it was</p> <p>11 for intranasal insulin and for other drug</p> <p>12 delivery-based products from the U.S.</p> <p>13 Q. And how much time have those three to four</p> <p>14 people from Bentley spent in Spain on that</p> <p>15 issue?</p> <p>16 A. I'm not sure the amount of time, but they would</p> <p>17 go for weeks at a time.</p> <p>18 Q. In the aggregate, how much time in a year?</p> <p>19 A. I don't know.</p> <p>20 Q. A month?</p> <p>21 A. If you have three or four people and they spend</p> <p>22 approximately a week or a week, then that almost</p> <p>23 adds up to a month. It might even be more.</p> <p>24 Q. And so your best estimate sitting here now is</p> | <p style="text-align: right;">Page 260</p> <p>1 Q. Well, you are CEO of Bentley and you're the</p> <p>2 president of Belmac. Can you help me understand</p> <p>3 why Laboratorios Belmac is paying Bentley</p> <p>4 Pharmaceuticals 500,000 euros a year under this</p> <p>5 agreement that you signed with Mr. Price?</p> <p>6 A. No, I can't answer it.</p> <p>7 Q. Who would know the answer to that question?</p> <p>8 A. Mr. Price and the accounting department in</p> <p>9 Spain.</p> <p>10 (Copy of E-mail to Mr. Murphy from</p> <p>11 Ms. Sanchez, dated January 3, 2002 was</p> <p>12 marked Exhibit Number 53 for</p> <p>13 identification.)</p> <p>14 Q. Let me show you this e-mail. It's dated, I</p> <p>15 believe, the 3rd of January, 2002, but my</p> <p>16 Spanish isn't too good. The date's in Spanish.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So two days after this technology and</p> <p>19 know-how agreement, there's an e-mail from you</p> <p>20 to Concha Sanchez, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And Concha Sanchez is a secretary for Adolfo</p> <p>23 Herrera; is that correct?</p> <p>24 A. Yes.</p> |
| <p style="text-align: right;">Page 259</p> <p>1 that every year three or four people spend an</p> <p>2 average of about a month at Laboratorios Belmac</p> <p>3 helping them with transdermal issues?</p> <p>4 MR. STEWART: Objection --</p> <p>5 A. No.</p> <p>6 MR. STEWART: -- mischaracterization</p> <p>7 of testimony.</p> <p>8 Q. What is your best estimate?</p> <p>9 A. It's on occasion, and I don't know. It's on</p> <p>10 occasion. It's not each and every year or</p> <p>11 looking way back into the past, no.</p> <p>12 Q. Who are the three or four people who go over and</p> <p>13 do this for Bentley?</p> <p>14 A. Eva Valasco, a technician, possibly Carl,</p> <p>15 another technician in the laboratory, Bob Gyurik</p> <p>16 would be the primary individuals.</p> <p>17 Q. And for this, Bentley receives half a million</p> <p>18 euros a year?</p> <p>19 A. That's an example I gave you. I'm not saying</p> <p>20 that all that alone is equal to the half</p> <p>21 million. I do not know.</p> <p>22 Q. What else does Bentley do for Laboratorios</p> <p>23 Belmac to make this money?</p> <p>24 A. I don't know.</p> | <p style="text-align: right;">Page 261</p> <p>1 Q. At Laboratorios Belmac?</p> <p>2 A. Yes.</p> <p>3 Q. And you have indicated that you want to remind</p> <p>4 Adolfo to send the complete omeprazole dossiers</p> <p>5 for filing in the U.S.A.; is that correct?</p> <p>6 A. For review to see if it would be compliant or</p> <p>7 capable of being filed in the U.S.</p> <p>8 Q. So one of the benefits that Bentley is getting</p> <p>9 from Laboratorios Belmac is the omeprazole</p> <p>10 dossiers and you're going to file for generics</p> <p>11 in the U.S.; is that correct?</p> <p>12 A. It was being explored we wanted to look into</p> <p>13 doing that.</p> <p>14 Q. Were those dossiers of omeprazole sent to you?</p> <p>15 A. Yes.</p> <p>16 Q. And did you file -- make generic filings in the</p> <p>17 U.S.?</p> <p>18 A. No.</p> <p>19 Q. Okay. What -- why not?</p> <p>20 A. The dossiers were not, in our opinion, to the</p> <p>21 standards for filing in the U.S., and the U.S.</p> <p>22 would require additional clinical studies.</p> <p>23 Q. So they weren't sufficient?</p> <p>24 A. We didn't feel they were sufficient for the U.S.</p> |

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1 Q. Is Bentley currently taking those dossiers,
2 building on them in an effort to file
3 generically in the U.S.?
4 A. We could. That decision has not been made.
5 Q. There's no plans internally to do that today?
6 A. We're looking at it. It's pretty late to file
7 on omeprazole in the U.S. There's a lot of them
8 out there already.
9 Q. How about lansoprazole? Did the dossiers for
10 lansoprazole come over to the U.S. as well?
11 A. Not to my recollection.
12 Q. Have you made generic filings for lansoprazole
13 here in the U.S.?
14 A. No.
15 Q. Is that under exploration currently?
16 A. It's being considered.
17 (Copy of E-mail to Mr. Bolling, et al.
18 from Mr. Fitzgibbons, dated January 22,
19 2002, and Attachment were marked Exhibit
20 Number 54 for identification.)
21 Q. I'm showing you Exhibit 54, and I'd ask you to
22 confirm that that's an operations update,
23 January 22nd, 2002, of Bentley Pharmaceuticals,
24 Inc.

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1 A. Yes.
2 Q. And it's got a cover letter or -- a cover e-mail
3 on the front, and you're one of the recipients;
4 is that correct?
5 A. Yes.
6 Q. All right. And under the Bentley
7 Pharmaceuticals Operations Update, the Spain
8 Activities, 1 A, is "filed for new patents for
9 improved orally delivered products, including
10 omeprazole and lansoprazole. Press release
11 issued November 14th, 2001." Correct?
12 A. Yes.
13 Q. And under E, it says, "Ethypharm's customers for
14 omeprazole in process of re-contracting with
15 Laboratorios Belmac." Correct?
16 A. Yes.
17 Q. And is that true, that was happening on
18 January 22nd, 2001?
19 A. I believe their customers had contacted us with
20 concerns about where they were going to get
21 their supply.
22 Q. Is this a true statement, that in January 22nd,
23 2002, Ethypharm customers for omeprazole in
24 process of re-contracting with Laboratorios

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1 Belmac?
2 MR. STEWART: Objection. He just
3 answered the question. Asked and answered.
4 A. Some of them have contacted us, worried about
5 supply of omeprazole and wanted to discuss
6 recontracting with us.
7 Q. And, in fact, we saw PharmAlliance on
8 November 14th, 2001 had already entered into a
9 confidentiality agreement; is that correct?
10 A. I saw it. You showed it to me here.
11 Q. And this is all happening before the formal
12 termination, not the notice of termination, but
13 before the termination of the contract between
14 Ethypharm and Belmac, correct?
15 A. Yes.
16 MR. BOSTWICK: Okay. I don't have any
17 further questions at this time. I may if we
18 have some more questions for Mr. Murphy.
19 MR. STEWART: I'll need about five,
20 five minutes or so to pull together my papers
21 for the hour and a half of questions that I
22 have.
23 THE VIDEOGRAPHER: The time is 6:28.
24 MR. BOSTWICK: You have an hour and a

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1 half of questions? Okay.
2 THE VIDEOGRAPHER: The time is
3 6:28 p.m. We're going off the record.
4 (Recess)
5 THE VIDEOGRAPHER: The time is
6 6:42 p.m. We're back on the record.
7 MR. STEWART: On the record?
8 MR. BOSTWICK: Sure.
9 EXAMINATION BY MR. STEWART:
10 Q. Mr. Murphy, as you know, I'm Craig Stewart, and
11 I represent Bentley Pharmaceuticals in this
12 matter. I have really relatively few questions
13 to ask of you at this time, but just a few
14 things to touch up some points that Mr. Bostwick
15 raised.
16 Would you turn to Exhibit 52 for a
17 moment, please? This is the so-called Transfer
18 of Technology and Assignment of Know-how
19 Agreement.
20 A. Yes.
21 Q. Did you have anything to do with the preparation
22 of this document?
23 A. No.
24 Q. Is it your understanding that Laboratorios

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| | |
|---|--|
| <p style="text-align: right;">Page 266</p> <p>1 Belmac has employees -- has its own employees?</p> <p>2 A. Yes.</p> <p>3 Q. Approximately how many employees?</p> <p>4 A. Approximately 350.</p> <p>5 Q. Does it have manufacturing facilities?</p> <p>6 A. Yes.</p> <p>7 Q. Does it have technology?</p> <p>8 A. Yes.</p> <p>9 Q. Does it have patents?</p> <p>10 A. Yes.</p> <p>11 Q. Does it have a need for services pertaining to</p> <p>12 its operations in Spain?</p> <p>13 A. With regard to manufacturing? With regard to</p> <p>14 development or --</p> <p>15 Q. Any services, especially with respect to such</p> <p>16 overhead services as accounting.</p> <p>17 A. Yes, it needs services such as reporting</p> <p>18 services for SEC reporting and the conversion of</p> <p>19 their statutory accounts to U.S. GAAP and such.</p> <p>20 Q. Now, Exhibit 52 you told us to your</p> <p>21 understanding was drafted for -- it was prepared</p> <p>22 at least in part for tax purposes.</p> <p>23 A. Yes.</p> <p>24 Q. Is that your testimony?</p> | <p style="text-align: right;">Page 268</p> <p>1 different projects with different universities,</p> <p>2 with different discussions for potential</p> <p>3 licensing or acquisition of products or it could</p> <p>4 be anything. It's to help me keep my fingers on</p> <p>5 the operation.</p> <p>6 Q. You say keep your fingers on the operation.</p> <p>7 Does that mean keep your fingers on the</p> <p>8 operation of -- do you mean so that you can</p> <p>9 manage?</p> <p>10 MR. BOSTWICK: Objection, leading.</p> <p>11 A. Just so I can be updated as to the status of</p> <p>12 everything and be aware of it and essentially</p> <p>13 answer questions to the board of directors as</p> <p>14 well.</p> <p>15 Q. If you turn to the Section 15, New Patents.</p> <p>16 A. Yes.</p> <p>17 Q. And Mr. Bostwick asked you some questions about</p> <p>18 that section, in particular, on the action item,</p> <p>19 "Jordan and Bob G. to review patent issues,</p> <p>20 Jordan to have more oversight on patents." Do</p> <p>21 you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Now, you've told us that the Jordan in question</p> <p>24 is a Jordan Horvath; is that right?</p> |
| <p style="text-align: right;">Page 267</p> <p>1 A. Yes.</p> <p>2 Q. Do you know what were the tax benefits that</p> <p>3 would accrue to either Belmac or Bentley as a</p> <p>4 result of this document?</p> <p>5 A. Yes.</p> <p>6 Q. In general, what were they?</p> <p>7 A. Laboratorios Belmac can account for a reasonable</p> <p>8 amount of management fees paid to a parent</p> <p>9 company, and by paying those fees, then they</p> <p>10 would save the taxes. The tax rate is at</p> <p>11 35 percent in Spain. So any reasonable fee that</p> <p>12 would be allowed in management services fees or</p> <p>13 any other fees would save them quite a bit of</p> <p>14 money in taxes.</p> <p>15 Q. Turn, if you would, to Exhibit 50.</p> <p>16 A. Yes.</p> <p>17 Q. And in particular, turn to Page 3 of Exhibit --</p> <p>18 of the document that is titled Project and</p> <p>19 Status. Do you have it?</p> <p>20 A. Yes.</p> <p>21 Q. First, what is the -- what's the purpose of the</p> <p>22 project and status report?</p> <p>23 A. This is just primarily to keep me up to date,</p> <p>24 help me be organized because there's so many</p> | <p style="text-align: right;">Page 269</p> <p>1 A. Jordan Horvath.</p> <p>2 Q. And at the time, he was in-house counsel for</p> <p>3 Bentley Pharmaceuticals?</p> <p>4 A. Yes.</p> <p>5 Q. What was the oversight that Mr. Horvath was to</p> <p>6 have? What was he to do?</p> <p>7 A. He was to keep me abreast of the status of all</p> <p>8 patents, to make sure that if we were filing in</p> <p>9 Europe that he was able to coordinate with U.S.</p> <p>10 patent attorneys to make sure that no territory</p> <p>11 in the U.S. or any other part of the world fell</p> <p>12 through the cracks, and it was really to protect</p> <p>13 the library of patents under the whole Bentley</p> <p>14 umbrella.</p> <p>15 Q. Did Mr. Horvath have anything to do with respect</p> <p>16 to the patents that are listed under Patent</p> <p>17 Spain, first, second, third, fourth, and fifth</p> <p>18 patent?</p> <p>19 A. No, nothing, other than just to report to me on</p> <p>20 the status and follow up to make sure that all</p> <p>21 of the different territories were filed.</p> <p>22 Q. Who was responsible for actually doing the work</p> <p>23 to draft and file the patents that I've just</p> <p>24 mentioned, 1, 2, 3, 4, and 5?</p> |

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1 A. Laboratorios Belmac.

2 Q. Turn, if you would, to Exhibit 37. It's a

3 document should be called Operations Update.

4 A. Yes.

5 Q. What is an operations -- what is the

6 operations -- as of 2001, what was the

7 operations update?

8 MR. BOSTWICK: Objection, asked and

9 answered.

10 A. The operations update was a summary provided by

11 Paul Fitzgibbons of all different activities

12 throughout Bentley and Laboratorios Belmac, and

13 it was provided to the board of directors, who

14 felt they would like to have more frequent

15 reports than our quarterly meetings.

16 Q. And how does that differ from the project status

17 report that we spoke about a couple of moments

18 ago?

19 A. At Paul's discretion, he would take just

20 highlights to keep them up to date.

21 Q. These were highlights from the project status

22 reports?

23 A. Yes.

24 Q. And under Point 1, Spain Activities, little E,

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1 Ethypharm, Mr. Bostwick asked you some questions

2 about that item; did he not?

3 A. Yes.

4 Q. And Item e says, "Ethypharm - negotiations

5 terminated due to lack of full commitment from

6 Ethypharm." Have I read that correctly?

7 A. Yes.

8 Q. Now, you told Mr. Bostwick that you weren't sure

9 what that referred to; is that right?

10 A. Right.

11 Q. Mr. Bostwick asked you whether that referred to

12 the decision which was made -- ultimately made

13 not to renew the manufacturing agreement, right?

14 A. Yes.

15 Q. Turn, if you would, to Exhibit 8. Exhibit 8 is

16 at the end.

17 A. Yes.

18 Q. And Mr. Bostwick showed you Exhibit 8. Can you

19 tell us what Exhibit 8 is?

20 A. It's a confidentiality and nondisclosure

21 agreement.

22 Q. For what purpose?

23 A. So that I could talk drug delivery systems and

24 enhancement of the permeation and absorption of

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1 drugs utilizing Bentley technology from the

2 United States.

3 Q. And who were you talking about that stuff with?

4 A. I was talking to Ethypharm, Ethypharm France.

5 Q. And during what period were you talking about

6 enhancement of absorption and permeation of

7 drugs through biological membranes with

8 Ethypharm?

9 A. Oh, I talked to them over a number of years,

10 stretching way back at various times.

11 Q. All right. And the date of the confidentiality

12 and nondisclosure agreement?

13 A. Yes, this was February 2000.

14 Q. And I think Mr. Bostwick pointed out that the

15 actual signing date of this is April 2000. Is

16 that right?

17 A. Yes.

18 Q. Now, do you know whether the discussions

19 proceeded with Ethypharm with respect to this

20 topic during 2000 and up to, say, 2001?

21 A. I believe that they did.

22 Q. Showing you or calling your attention to

23 Exhibit 37, "Ethypharm, negotiations terminated

24 due to lack of full commitment from Ethypharm."

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1 Could this be the negotiations that were

2 referenced in this document, Exhibit 37?

3 A. It could be.

4 Q. Then, if you would turn, please, to Exhibit 31,

5 the manufacturing agreement.

6 A. Yes.

7 Q. Did you participate -- would you remind us what

8 Exhibit 31 is, please?

9 A. Have to see the English translation. It's a

10 manufacturing contract.

11 Q. And who was the manufacturing contract between?

12 A. Between Laboratorios Belmac and Laboratorios

13 Ethypharm Spain.

14 Q. And who was it signed by on behalf of

15 Laboratorios Belmac?

16 A. Adolfo Herrera.

17 Q. And for Laboratorios Ethypharm S.A.?

18 A. It appears that would be Adolfo Basilio, but I'm

19 not sure if I recognize that.

20 Q. Did you direct -- first, let me ask. Did you --

21 were you involved in the drafting of the

22 manufacturing contract between Laboratorios

23 Ethypharm and Laboratorios Belmac?

24 A. No.

| | |
|---|---|
| <p style="text-align: right;">Page 274</p> <p>1 Q. Who drafted the agreement between Laboratorios 2 Belmac and Laboratorios Ethypharm? 3 A. I believe it was probably Adolfo and Adolfo 4 Basilio. 5 Q. Did Bentley Pharmaceuticals have anything to do 6 with the preparation of this agreement? 7 A. No. 8 Q. Did you direct Adolfo Herrera to draft the 9 manufacturing agreement? 10 A. No. 11 Q. And showing you or -- directing your attention 12 to Paragraph G of the manufacturing agreement, 13 what is required notice for either party to 14 cancel the agreement? 15 A. Four months. 16 Q. And turn, please, if you would, to Exhibit 39. 17 A. Yes. 18 Q. And Exhibit 39, I believe you told us, is from 19 your business journal that you kept during this 20 time? 21 A. Yes. 22 Q. And referring to the entry dated 5-23-01, I 23 believe it was your testimony that this was your 24 own internal tickler of things to think about;</p> | <p style="text-align: right;">Page 276</p> <p>1 Q. It's your testimony that Adolfo Herrera advised 2 you that that would be his intention; is that 3 correct? 4 A. Yes. 5 Q. And it -- does it remain your testimony that 6 Mr. Herrera made that decision? 7 A. Yes. 8 Q. Did you at any time either explicitly or 9 implicitly direct Mr. Herrera to give notice of 10 nonrenewal of the manufacturing agreement? 11 A. No. 12 Q. Did you -- was there anything wrong with -- in 13 your judgment, with regard to Mr. Herrera of 14 giving notice of nonrenewal of the manufacturing 15 agreement? 16 A. No. 17 Q. Now, who were the -- to your knowledge, who were 18 the owners of Ethypharm France? 19 A. I believe it was a partnership of Mr. Leduc and 20 Mr. DeBregeas. 21 Q. And from time to time, you had discussions with 22 Mr. Leduc and Mr. DeBregeas? 23 A. Yes. 24 Q. At any time, did you ever tell Mr. Leduc or</p> |
| <p style="text-align: right;">Page 275</p> <p>1 is that right? 2 A. This could be or it could be relayed to me by 3 Mike Price. 4 Q. I'm going to direct your attention to Item 4, 5 "Ethypharm expire May 2002, six-month notice 6 required, September." Do you see that? 7 A. Yes. 8 Q. And you wrote that, right? 9 A. Yes. 10 Q. Did you know at the time how many months was 11 required to provide notice in order to terminate 12 the March of -- March 23, 2000 manufacturing 13 agreement? 14 A. Apparently not. I was wrong, six months. 15 Q. And referring, please, to Exhibit 34. Is it 16 your -- now, you've -- tell us what Exhibit 34 17 is, please. 18 A. Exhibit 34, as translated here, it appears to 19 be -- it is the -- giving notice. 20 Q. I'm sorry? 21 A. Communicating our decision to cancel the 22 manufacturing contract. 23 Q. And did you see this letter before it was sent? 24 A. No, I did not.</p> | <p style="text-align: right;">Page 277</p> <p>1 Mr. DeBregeas that any agreement made by 2 Laboratorios Belmac was -- should be considered 3 as an agreement by Bentley Pharmaceuticals, 4 Incorporated? 5 A. No. 6 Q. Do you have any reason to believe that either 7 Mr. Leduc or Mr. DeBregeas were aware you were 8 president of Laboratorios Belmac? 9 A. I believe they both knew I was president of 10 Laboratorios Belmac. 11 Q. And how would they have known that? 12 A. Because routinely when I'm traveling in Europe, 13 I hand two cards out; one which is Laboratorios 14 Belmac, indicating me as president, and another 15 for the parent company in the United States, 16 Bentley. 17 Q. Are you aware of any draft agreements in which 18 you are named as executive director of 19 Laboratorios Belmac? 20 A. Yes, I believe there was some where I was called 21 executive director of Laboratorios Belmac. 22 Q. And at any time, did you tell Mr. Leduc or 23 Mr. DeBregeas that actions taken by Laboratorios 24 Belmac should be -- would be actions that they</p> |

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1 should consider to be taken by Bentley
2 Pharmaceuticals?
3 A. No.
4 Q. Did you ever tell Mr. Leduc, Mr. DeBregeas or
5 anyone else at Ethypharm that Laboratorios
6 Belmac had authority to act on behalf of Bentley
7 Pharmaceuticals, Incorporated?
8 A. No.
9 Q. Did you ever tell Mr. Leduc, Mr. DeBregeas or
10 anyone else at Bentley that they should consider
11 any action that you took on behalf of
12 Laboratorios Belmac to bind Bentley
13 Pharmaceuticals, Incorporated?
14 A. No.
15 MR. STEWART: I have nothing further.
16 MR. BOSTWICK: Okay. Just a couple of
17 questions on Mr. Stewart's last point.
18 RE-EXAMINATION BY MR. BOSTWICK:
19 Q. Can you refer to Exhibit 1, Paragraph 24?
20 A. Yes.
21 Q. This paragraph, why don't I give you a moment to
22 read it over, just the Paragraph 24.
23 A. Uh-huh.
24 Yes.

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1 Q. In this paragraph, you indicate when you
2 directly interacted with Ethypharm, it has been
3 in two different contexts. Do you see that?
4 A. Yes.
5 Q. And the first contact you talk about is as in
6 the capacity of president of Belmac, and you
7 say, "To the extent I participated in these
8 issues, it was solely in my capacity as an
9 officer of Belmac and not on behalf of Bentley,"
10 correct?
11 A. Yes.
12 Q. Now, you said you think you may have given two
13 cards out to some of the individuals at
14 Ethypharm, correct?
15 A. Yes.
16 Q. What specific steps did you take to indicate to
17 people at Ethypharm when you were solely acting
18 as your capacity as an officer of Belmac and not
19 Bentley?
20 A. When we had discussions, I would say, "In
21 Bentley or in the States, we have drug delivery
22 activities. Do you have an interest in
23 products, these potential applications?" Or if
24 I was responding to them at their request to try

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1 to intercede because they had a communication
2 problem with Belmac, they knew I was coming as
3 president of Belmac to try to solve that
4 problem. The distinction was pretty easy to
5 see, and they both -- they all knew of my
6 capacity in the two different companies.
7 Q. Okay. Well, I can understand how they might
8 think you're representing both companies at all
9 times, but how is it that they would understand
10 that you're taking off your Bentley hat, you're
11 not acting for Bentley at all, and you're only
12 acting as Laboratorios Belmac in any specific
13 discussion?
14 A. By the context of our discussion.
15 Q. Can you give me -- let's talk about, for
16 example, the 1995 meetings when you come over to
17 talk to Mr. DeBregeas in Paris and Adolfo de
18 Basilio, and you introduce yourself, your role
19 at Bentley, your role at Belmac. Can you give
20 me a specific factual example of what you did to
21 clarify when you were acting only in the
22 capacity as Laboratorios Belmac?
23 A. I can't think of any specific one in 1995.
24 Q. How about your meeting with Claude Dubois in

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1 1997? Can you think of a specific example of
2 something you said or did to Mr. Dubois that
3 would clarify for him that at a certain point in
4 that discussion you had taken off your Bentley
5 hat and you were only talking to him as
6 Laboratorios Belmac?
7 A. I think you can see that in his summary of his
8 memo, which I don't have handy here, but he made
9 the distinction.
10 Q. Okay. Well, not referring to his memo, but just
11 your memory and your understanding. Can you
12 give me a specific action that you took, a
13 statement that you made or something that you
14 did that would clarify for Mr. Dubois that there
15 was a moment in time in the meeting where you
16 had taken off your Bentley hat and you were only
17 Laboratorios Belmac?
18 A. I can't think of a single thing within that
19 discussion.
20 Q. Okay. How about in any discussion that you ever
21 had with anyone at Ethypharm? Can you provide
22 me with a specific factual example of something
23 that you did to let the people at Ethypharm know
24 that there was a moment in time in that

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| | |
|--|---|
| <p style="text-align: right;">Page 282</p> <p>1 discussion where you were not acting as Bentley</p> <p>2 but you were only wearing one hat --</p> <p>3 A. Yes.</p> <p>4 Q. -- and it was a Laboratorios Belmac hat?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. When was that?</p> <p>7 A. When we signed the confidential agreement to</p> <p>8 discuss the permeation of new drugs and the</p> <p>9 application of drug delivery systems.</p> <p>10 Q. Okay. That would be an example, if I'm</p> <p>11 understanding you correct -- correctly, that</p> <p>12 would be an example where you were saying, "I'm</p> <p>13 only acting with my Bentley hat," correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. What I'm asking is when was there a time</p> <p>16 when you can recall through your actions or a</p> <p>17 specific statement you made that clarified for</p> <p>18 the people at Ethypharm that you had taken off</p> <p>19 your Bentley hat and you were only acting solely</p> <p>20 in your capacity as an officer of Belmac and not</p> <p>21 on behalf of Bentley?</p> <p>22 A. There were meetings we had in Paris where I</p> <p>23 would come to try to, say, resolve problems they</p> <p>24 were having in communication with Belmac, and</p> | <p style="text-align: right;">Page 284</p> <p>1 Q. And Mr. Bostwick asked you some questions about</p> <p>2 Exhibit 40. And turn, if you would, to the</p> <p>3 letter from Mr. Gerard Leduc, dated June 8,</p> <p>4 2001. Do you have it?</p> <p>5 A. Yes.</p> <p>6 Q. And that letter is addressed to you; is that</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. And who -- what is the company that it is</p> <p>10 addressed to?</p> <p>11 A. On the top right here?</p> <p>12 Q. Yes.</p> <p>13 A. It's Bentley Pharmaceuticals, Inc.</p> <p>14 Q. And let me read to you the first sentence.</p> <p>15 "Dear sir: Further to our discussion of the</p> <p>16 beginning of year 2000, please find attached a</p> <p>17 draft of agreement aiming at regularizing the</p> <p>18 relationship between Ethypharm and Belmac." Do</p> <p>19 you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Who did you understand to be the Belmac that is</p> <p>22 referred to in that sentence?</p> <p>23 A. Laboratorios Belmac.</p> <p>24 Q. And Mr. Leduc attached to this letter a draft</p> |
| <p style="text-align: right;">Page 283</p> <p>1 then we would go into other business and other</p> <p>2 discussions of, "Oh, what do we want to do with</p> <p>3 this stateside pharmaceutical products for</p> <p>4 permeation enhancement?" We would talk about</p> <p>5 the potential application of different products.</p> <p>6 Q. I understand you may have talked about different</p> <p>7 topics, but how -- is there a specific statement</p> <p>8 you made or something you did or said that would</p> <p>9 let them know that at a certain moment you had</p> <p>10 taken off your Bentley hat and you were</p> <p>11 acting -- and I'm reading your affidavit --</p> <p>12 solely in your capacity as officer of Belmac and</p> <p>13 not on behalf of Bentley?</p> <p>14 A. I can't think of anything specific.</p> <p>15 MR. BOSTWICK: I don't have anything</p> <p>16 further.</p> <p>17 MR. STEWART: Just one last document.</p> <p>18 RE-EXAMINATION BY MR. STEWART:</p> <p>19 Q. Could you turn to Exhibit 40, please?</p> <p>20 A. These are out of order now.</p> <p>21 Q. If you want to pass over the top couple of</p> <p>22 inches, I can see --</p> <p>23 A. I'm getting there. It's out of order. 42. Got</p> <p>24 it.</p> | <p style="text-align: right;">Page 285</p> <p>1 agreement, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Was this an agreement that you had anything to</p> <p>4 do with?</p> <p>5 A. No.</p> <p>6 Q. This was an agreement that was prepared by</p> <p>7 Ethypharm, correct?</p> <p>8 A. This was prepared by Ethypharm.</p> <p>9 Q. And turn, if you would, to the last page of the</p> <p>10 agreement, Page 26.</p> <p>11 A. Yes.</p> <p>12 Q. And would you read for us, please, what is</p> <p>13 written in the signature blocks, first for</p> <p>14 Ethypharm and then for Belmac?</p> <p>15 A. For Ethypharm S.A., Mr. Patrice DeBregeas,</p> <p>16 president.</p> <p>17 Q. And this was the space for Mr. DeBregeas to date</p> <p>18 and sign?</p> <p>19 A. Yes.</p> <p>20 Q. For Ethypharm S.A.?</p> <p>21 A. Yes.</p> <p>22 Q. For now Belmac?</p> <p>23 A. For Belmac, S.A., Mr. James R. Murphy, executive</p> <p>24 director.</p> |

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1 Q. And were you the executive director for Belmac,
 2 S.A. at that time?
 3 A. I was the executive director.
 4 Q. For Laboratorios Belmac?
 5 A. Yes.
 6 Q. Mr. Murphy, are you aware of any signed
 7 agreement between Ethypharm and Bentley
 8 Pharmaceuticals, Incorporated with respect to
 9 the manufacture of omeprazole or other
 10 pharmaceuticals products for Ethypharm S.A. or
 11 involving any technology which relates to the
 12 manufacture of omeprazole?
 13 A. Between Bentley and Ethypharm, no.
 14 MR. STEWART: I have nothing further.
 15 MR. BOSTWICK: We can go on forever.
 16 THE VIDEOGRAPHER: The time is
 17 7:15 p.m. on July 19th, 2006. This is the end of
 18 Tape Number 4, and this completes the videotaped
 19 deposition of Mr. James Murphy.
 20 (Deposition concluded at 7:15 p.m.)
 21
 22
 23
 24

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1 CERTIFICATE
 2 I, JAMES R. MURPHY, do hereby certify that I
 3 have read the foregoing transcript of my
 4 testimony, given on July 19, 2006, and I further
 5 certify that said transcript is a true and
 6 accurate record of said testimony (with the
 7 exception of the corrections listed below):
 8 Page Line Correction
 9
 10
 11
 12
 13
 14
 15
 16
 17 Dated at , this
 18 day of , 2006.
 19
 20 JAMES R. MURPHY
 21
 22 SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY
 23
 24 slb

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1 CERTIFICATE
 2
 3 COMMONWEALTH OF MASSACHUSETTS
 4 SUFFOLK, SS
 5 I, Sandra L. Bray, Registered Diplomate
 6 Reporter and Notary Public in and for the
 7 Commonwealth of Massachusetts, do hereby
 8 certify:
 9 That JAMES R. MURPHY, the witness whose
 10 deposition is hereinbefore set forth, was duly
 11 sworn by me and that such deposition is a true
 12 record of my stenotype notes taken in the
 13 foregoing matter, to the best of my knowledge,
 14 skill and ability.
 15 IN WITNESS WHEREOF, I have hereunto set
 16 my hand this 5th day of August, 2006.
 17
 18
 19 Sandra L. Bray, RDR
 20 Registered Diplomate Reporter
 21
 22
 23
 24

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